

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**NEWARK EXTENDED CARE
Employer**

and

Case No. 22-RC-13203

**1199 SEIU, UNITED HEALTHCARE WORKERS
EAST, NEW JERSEY REGION
Petitioner**

and

**LOCAL 707, H.E.A.R.T.
Intervenor-Union**

***William Massey and Jane Chung, Esqs. (Gladstein Reif & Meginniss, LLP),
New York, NY, for the Petitioner.
Thomas Rubertone, Jr., Esq., Scarsdale, NY,
for the Intervenor.***

RECOMMENDED DECISION ON OBJECTIONS

STEVEN DAVIS, Administrative Law Judge: Upon a petition filed on January 25, 2011, by 1199 SEIU, United Healthcare Workers East, New Jersey Region (Petitioner or 1199), and pursuant to a Stipulated Election Agreement between the Petitioner, Newark Extended Care (Employer) and Local 707, H.E.A.R.T. (Union, Intervenor or Local 707), an election was held on April 14, 2011 among two groups of employees, Group "A", consisting of professional employees defined as registered nurses, and Group "B", consisting of nonprofessional employees including licensed practical nurses, certified nurses aides, unit secretaries, housekeeping employees, dietary employees, recreation employees, rehabilitation aides, transportation aides, and maintenance employees.

The professional employees in Group "A" voted to be included in a single unit with nonprofessional employees in Group "B".¹ After the votes in Groups "A" and "B" were commingled, the ballots were opened and counted. The Tally of Ballots showed that of approximately 273 eligible voters, 130 were cast for the Petitioner, 78 were cast for the Intervenor, there was one vote cast against participating labor organizations, and 3 challenged ballots.

On April 21, the Intervenor filed timely objections to conduct which it asserts affected the

¹ There were determinative challenges to that vote which, pursuant to a Stipulation and Waiver, were withdrawn and those three challenged voters were deemed eligible to vote.

results of the election.² They are as follows, set forth verbatim:³

1. NEC [Employer], both independently and in collusion with Local 1199, created a hostile environment that assisted 1199 to get more votes than 707 HEART by engaging in the following unfair labor practices:

Employer continuous discipline, including, suspension and discharge of workers by utilizing 1199 supporters to write statements against 707 HEART delegate and other employees; Employer purposefully ignored the collective bargaining agreement discipline and grievance provisions by delaying the grievance process and schedule of meetings to address discipline including, suspensions and discharges causing employees to be disaffected of 707 HEART.

2. Employer utilized a Local 1199 supporter and CNA/Ward Clerk, Marie St. Louis, in the capacity of Staffing Coordinator on the evening shift, and improperly gave her the responsibility to assign duties to staff. Marie St. Louis thereupon misused her authority to coerce and intimidate employees, by reporting them to the supervisor causing employees to be beholden to her and support 1199 in the election.

Ms. St. Louis also gave more favorable CNA assignments to Haitian workers to gain their support for 1199.

Ms. St. Louis a union delegate also intentionally blocked employees' health insurance and other issues from being addressed at union and labor-management meetings by falsely stating that employees on her shift had no complaints. Ms. St. Louis said openly at a recent union meeting that she had no problem with the health insurance, yet she withheld information for processing employees' health insurance claims from employees on her shift.

3. Employer security guard Victoria "unknown" harassed union president Odette Machado from the incumbent union, by demanding Ms. Machado to move from the lobby of the facility, while permitting Local 1199 representatives to remain in the area. Ms. Machado was not electioneering in said area at that time.

Employer security guard Victoria "unknown" who was stationed near to the election area was campaigning for 1199 by saying to employees "did you vote yet, go vote for 1199, check the green paper"; when Ms. Machado witnessed this Ms. Machado asked Victoria, is this why you wanted me to leave the lobby so you can campaign for 1199, Victoria said I was only playing, they are my friends.

5. Local 1199 staffers were campaigning at the facility in violation

² Seven objections were filed. The Intervenor withdrew Objection No. 4.

³ The critical period for considering objectionable conduct is from January 25, 2011, the date the petition was filed, until April 14, 2011, the date of the election.

of the “no campaign within 24 hours of the election” rule:

Local 1199 continued to drive its purple SEIU bus around the facility on the day before and on the day of election.

Local 1199 parked its purple bus in front and around the facility, the day before and during both voting shifts on the day of election; this violation was brought to the attention of the NLRB.

Local 1199 willfully disregarded the direction of NLRB agent Frank Flores who told 1199 to move the bus.

Local 1199 was distributing tee-shirts and purple ribbon holders for ID cards to employees from their purple bus in front and around the facility, the day before and during both voting shifts on the day of election.

Local 1199 was distributing alcohol to the NEC [Employer’s] employees (including employees with known alcoholism problems) from its purple bus in front and around the facility, the day before and on the day of election.

Local 1199 was openly rallying and drinking alcohol with NEC employees, from their purple bus in front and around the facility, the day before and on the day of election.

6. Coercion and threats of physical violence and abusive language was used by Local 1199 staff and directed at Local 707 HEART supporters and to voting NEC employees. Such conduct was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.

Gloria Campbell said openly at a Local 1199 meeting at NEC that “anyone who did not vote for 1199 would have to answer to me.”

Local 1199 supporter, Montalvo, incited animus and unwarranted complaints against pro-Local 707 HEART employees by reporting them to management and coercing patients to complain about them.

Local 1199 supporter, Lillian Smith, continuously threatened and used obscene language to pro-707 HEART employee Marie Valentine in the presence of other employees, saying “I’ll get that whore, don’t listen to that bitch with her 707 HEART bullshit; I will whip her f---ing ass if she keep talking that shit about 707 HEART.”

Lillian Smith continuously threatens and uses obscene language to pro-707 HEART employees in the presence of other employees.

7. Threats of physical violence and abusive language was used by Local 1199 staff and directed at Local 707 HEART representatives in the presence of voting NEC employees:

Local 1199 representative, Lillian Smith, shouted to Local 707 HEART president Odette Machado in the presence of other employees, stating, “you ain’t shit.”

SEIU staffer threatened Odette Machado for standing in the lobby of the facility and told her to come outside so he can whip her ass; SEIU staffer called Felix Lopez “Driving Ms. Daisy and a bitch ass” in the presence of other employees.

SEIU staffer took photographs of employees without their consent.

SEIU staffer circulated photographs with slanderous material about Local 707 president Odette Machado, including photographs of her family friends without consent. SEIU staffer called supporters of 707 HEART clowns and ignorant jackasses in the presence of other employees.

On May 19, 2011, the Regional Director issued a Report on Objections and Notice of Hearing directing that a hearing be held on the above Objections, and that a report be issued with recommendations to the Board. On July 5, 6, and 7, I conducted a hearing in New York, NY.

Based on the record and my observation of the demeanor of the witnesses and the briefs filed by Local 707 and 1199, I make the following recommended Decision.

I. Findings of Fact

A. Background

1199 was party to a collective-bargaining agreement with the Employer which was effective from June, 2005 to June, 2008, covering the unit employees.

Local 707, a newly formed labor organization, won an election conducted among the employees of the Employer, and on April 23, 2008, it was certified as the exclusive collective-bargaining representative by the Board. The Employer and Local 707 entered into an interim collective-bargaining agreement in August, 2008. Odette Machado, the president of Local 707, had been a vice president of 1199.

The election was held on April 14, 2011 in the employee break room/dining room on the first floor of the Employer's facility between the hours of 5:30 a.m. to 8:30 a.m. and 2:00 p.m. to 4:30 p.m. A pre-election conference was held in the break room beginning at about 5:00 a.m. with Board agent Frank Flores, and representatives of 1199, including Rickey Elliott, its vice president, and Local 707, including president Machado.

Applicable Legal Principles

It is well settled that representation elections are not lightly set aside. There is a strong presumption that ballots cast under specific NLRB safeguards reflect the true desires of the employees. Accordingly, the burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one. The objecting party must show, inter alia, that the conduct in question affected employees in the voting unit and had a reasonable tendency to affect the outcome of the election. *Delta Brands, Inc.*, 344 NLRB 252, 252-253 (2005).

Certain of the Objections allege that a party, 1199, committed objectionable conduct. The Board has stated:

In evaluating party conduct during the critical period, the Board applies an objective standard, under which conduct is found to be objectionable if it has "the tendency to interfere with the employees' freedom of choice." In deciding whether such interference has occurred under this standard, the Board considers: (1) the number of incidents of misconduct; (2) the severity of the incidents and whether they were likely to cause fear

among employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election date; (5) the degree of persistence of the misconduct in the minds of the bargaining unit employees; (6) the extent of dissemination of the misconduct among bargaining unit employees; (7) the effect, if any, of misconduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; (9) the degree to which the misconduct can be attributed to the party.

Cedars-Sinai Medical Center, 342 NLRB 596, 597 (2004).

Other Objections allege that employee supporters of 1199 committed objectionable conduct. The conduct of employees is properly assessed under the Board's standards for third-party conduct. *Corner Furniture Discount Center, Inc.*, 339 NLRB 1122, 1123 (2003). In Objections based on third-party threats, the Board will not overturn the election results unless the third party's conduct was "so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984). In assessing the seriousness of the alleged threat, the Board considers the following factors: (1) the nature of the threat itself; (2) whether it encompassed the entire unit; (3) the extent of dissemination; (4) whether the person making the threat was capable of carrying it out, and whether it is likely that employees acted in fear of that capability; and (5) whether the threat was made or revived at or near the time of the election.

In *Independence Residences, Inc.*, 355 NLRB No. 153, slip op. at 5 (2010), the Board has stated that in third-party cases not involving threats, it has "rephrased the standard, as in *Hollingsworth Mgt. Service*, 342 NLRB 556, 558 (2004), as follows: 'In evaluating electioneering by nonparties, the standard is whether the conduct at issue so substantially impaired the employees' exercise of free choice as to require that the election be set aside,'" citing *Rheem Mfg. Co.*, 309 NLRB 459, 463 (1992); *Southeastern Mills*, 227 NLRB 57, 58 (1976)."

B. Objection No. 1

This Objection alleges essentially that the Employer, independently, and in collusion with 1199, suspended, disciplined and discharged employees by using 1199 supporters to write statements against 707 delegates and other employees. It is further alleged that the Employer purposefully ignored the collective-bargaining agreement's discipline and grievance provisions by delaying the grievance process and the scheduling of meetings to address discipline, causing employees to withdraw their support of Local 707.

Facts and Analysis

First, there is no evidence that the Employer, either independently or in collusion with 1199, disciplined employees in order to assist 1199 to obtain more votes in the election. There is also no evidence that the Employer used 1199 supporters to write statements against Local 707 delegates or other employees. The only evidence which may possibly relate to this issue is that concerning Marie St. Louis, an 1199 supporter, who encouraged an employee to report to management that her ear was twisted by a co-worker. That allegation will be discussed in Objection No. 2, below.

As to the allegation that the Employer ignored the contract's discipline and grievance provisions by delaying the grievance process and the scheduling of meetings which caused the workers to withdraw their support for Local 707, it must first be noted that the grievance

procedure itself has not been offered in evidence. The Local 707 contract, which incorporates certain parts of the predecessor 1199's contract, states that its grievance procedure is different from that in the Employer's contract with 1199. Accordingly, it is impossible to determine how the grievance procedure has been ignored or delayed without knowing the precise time limitations and other provisions in the procedure.

Local 707 argues that the Employer delayed the holding of grievance sessions and failed to respond to grievance steps in a timely manner. Employee Carlette Parker stated that she believed that the Local 707 contract provides, as did the 1199 contract, that if the Employer does not respond to a first or second step grievance within the time set forth, Local 707 is authorized to process the grievance to arbitration. Inasmuch as the grievance procedure contained in the contract between Local 707 and the Employer was not offered in evidence, it cannot be determined whether Local 707 could have processed those grievances directly to arbitration. If so, Local 707 could have obtained a speedy resolution of the grievances despite the Employer's alleged delay in responding to grievances or setting meeting dates.

Machado gave a history of Local 707's labor relations relationship with the Employer. She stated that that their rapport was excellent when the collective-bargaining agreement was signed in August, 2008, with regular labor-management meetings being held and grievances being resolved.

However, that cordial relationship changed when the Employer failed to pay a contractual 4% across the board wage increase on May 1, 2009. The Employer failed to implement the increases citing financial hardship based on a withdrawal liability from the 1199 pension fund. Local 707 filed a grievance which was heard by an arbitrator. On December 1, 2009, the arbitrator directed the Employer to pay the employees a 2% wage increase effective as of November 1, 2009, with the remaining 2% payable as of April 30, 2011.

Machado stated that after the Union filed its wage increase grievance in about mid-2009, she noticed a change in the way that administrator Morton Paneth dealt with Local 707. She stated that long term employees were suspended and discharged, tension arose between the Employer and Local 707, and the Employer delayed holding grievance meetings and failed to respond to outstanding grievances.

First, it is apparent that the delay in holding grievance meetings began sometime in mid-2009, 1½ years before January 25, 2011, the start of the critical time period for the consideration of objectionable conduct. Second, Machado attributes the change in the Employer's attitude toward grievance handling to the wage increase issue, not an attempt to garner support for 1199. Indeed, the wage issue became a matter for dispute long before the appearance of 1199 in January, 2011. However she conceded that "for the most part, [the Employer] would address each grievance" – not necessarily by resolving each one, but by making a response.

Although there was some evidence that the processing of grievances had been delayed by the Employer, the evidence establishes that the delay occurred before the critical period began and, in fact, improved dramatically after the petition was filed by 1199. Further, any delay in the handling of grievances was caused by the Employer's negative reaction to the Union's filing of the 4% wage increase grievance and not by the appearance of 1199, or through any effort to encourage employees to withdraw their support for Local 707.

Moreover, it was not proven that the cause of the delay was to cause disaffection among the workers toward Local 707. Rather, the cause may have been the Employer's unhappiness

with Local 707 itself. Thus, administrator Morton Paneth, in response to Machado's letter in April, 2010 complaining about the delay in scheduling grievances, blamed the "Union's antagonistic and unyielding attitude...." He claimed that most of the grievances cited had been resolved, including its compliance with the arbitrator's award concerning the 4% wage increase. Machado noted that, at a labor-management meeting, Paneth stated that there is "unrest" in the unit, and in a previous meeting, assistant administrator Elky Eisdorfer said that "maybe the workers should have stayed in 1199." This last comment is cited by Local 707 as evidence that the Employer supported 1199. However, the Board has held that "simply expressing, in a noncoercive manner, a preference for one union over another in a multiunion election is not unlawful." *Flamingo Hilton-Laughlin*, 324 NLRB 72, fn. 1 (1997). It must be noted that the comment was made 2 years before the election was held, at a time when 1199 had not yet filed a petition.

There was extensive evidence concerning grievances filed in 2010, up to one year before the start of the critical period. Employee Chatman testified that it took months to schedule a grievance meeting for two grievances she filed. She stated that Eisdorfer did not return her phone calls requesting a hearing date, and she had to file an unfair labor practice charge in late January, 2011, alleging that the Employer was not timely processing grievances. The charge resulted in the immediate resolution of the grievances, and Machado testified that after the charge was filed the Employer began scheduling grievances in a more timely manner.

Accordingly, although there was a delay, grievances began to be heard more readily following the charge which was filed during the critical period. Further, steps were taken by Local 707 to obtain resolution of grievances and set grievance meeting dates. Thus, on April 11, 2010, a labor-management meeting was scheduled, with a list of grievances, including health insurance outstanding bills. Machado conceded that Local 707 received reports regarding the processing of those bills in a timely manner when she asked for them, but that she had to request a response two or three times before she received them.

Machado also conceded that delay in obtaining payment for certain health insurance bills was not the fault of the Employer, where, for example, employees mistakenly went to an out-of-network physician and were therefore ineligible for reimbursement for that bill. Further, there was evidence that the Employer immediately resolved grievances in the employees' favor concerning their non-payment of bills for anesthesia and laboratory fees.

In addition, efforts were made to resolve the outstanding health insurance grievances concerning bills that were not paid by the health insurance plan. It was decided that all bills would be submitted to Annie Jusi, the Employer's human resources specialist, and that she would process them with the insurance broker in an effort to have the bills paid and the issues resolved. Also, two meetings were held, one in late 2009 or early 2010, and on February 14, 2011, during the critical period, which were attended by the insurance broker, the administration, Local 707 delegates and employees who had outstanding bills.

Machado testified that the Employer began scheduling grievances in February, 2011, during the critical period. In late February, 2011, the Employer sent Machado an extensive list of 12 grievance items to be discussed at the February 28 labor-management meeting, including some which the Employer indicated had been resolved. The list also included a schedule of grievances concerning seven named employees, and the dates, all in late February or early March on which the grievances would be heard, with the list of Local 707 delegates who represented the workers.

Machado agreed that there had been "more activity from the Employer regarding

grievances in March and April, 2011, than there had been since November, 2010 to March, 2011.” In addition, in March, 2011, Machado granted Paneth’s request to extend the time for him to respond to the Union concerning the payment of health insurance bills, reimbursement to employees, and the lack of certain services in the Health Insurance Plan. Further, a labor-management meeting was held on April 11, after which the Employer sent Machado a note stating that two of the three grievances discussed had been resolved.

The evidence establishes that during the critical period, the Employer was responsive to Local 707’s request that it process grievances and hold meetings in order to resolve such grievances.

Accordingly, I cannot find that Local 707 has proven that the Employer or 1199 engaged in objectionable conduct during the critical period which affected the results of the election. Accordingly Objection No. 1 is overruled.

C. Objection No. 2

This Objection alleges essentially that the Employer used Local 1199 supporter Marie St. Louis as a Staffing Coordinator and improperly gave her the authority to assign duties to staff. It is alleged that she misused her authority so as to coerce and intimidate employees by reporting them to the supervisor; gave more favorable assignments to Haitian workers to gain their support for 1199; as a Local 707 delegate, intentionally blocked employees’ health insurance and other issues from being addressed at various meetings; and falsely stating that employees had no complaints, and withholding information concerning health insurance claims from employees.

This Objection encompasses two allegations concerning St. Louis. First, that she, essentially, as an agent of the Employer, made unfavorable assignments to Local 707 supporters and gave more favorable duties to 1199 supporters in order to cause the workers to support 1199. Second, it is alleged that St. Louis failed to act diligently as a Local 707 delegate. In this regard, it is claimed that she did not bring grievances, particularly health insurance matters such as the non-payment of bills, to Machado’s attention while at the same time claiming that the employees that she represented had no problems. The essence of this part of the Objection, therefore, is that St. Louis actions tended to cause employees to believe that Local 707 was not representing the unit employees properly.

The Petitioner argues that Local 707 cannot object to its loss of the election based upon the actions of its agent. *Camp Milling Co.*, 109 NRB 471, 473 (1954). 1199 argues that St. Louis, by virtue of her status as a delegate is an agent of Local 707. That may be true. However, the Intervenor’s Objection is that, although St. Louis may be a delegate of Local 707 she was, in fact, acting in behalf of 1199 in order to cause employees to be disaffected from supporting Local 707. I accordingly do not agree that St. Louis’ status as an agent of Local 707 requires that this Objection be overruled.

Facts and Analysis

St. Louis as “Staffing Coordinator”

There was testimony that St. Louis, a certified nurse’s aide and ward clerk, acted as a “staff coordinator” in making assignments of the nurses’ aides. The schedules and initial assignments are prepared by the 3:00 p.m. to 11:00 pm. nursing supervisor and printed by computer. The sheets are then given to St. Louis who, on her 3:00 p.m. to 11:00 p.m. shift,

makes the final assignments to the nurses' aides. At 3:00 p.m., she stands at the nurses' station and assigns the nurses to specific patient rooms and patient beds. Some nurses ask for and receive a change in assignment because the patient assigned, called a "total" is more difficult to care for. For example, such a patient may require complete assistance with his daily needs, including feeding, tube-feeding, bathing, toileting, lifting with a hoist, etc. Other patients called "independent" represent easier work, as the patient is able to care for himself. Apparently, because the patients are long-term residents, the nurses know, upon looking at the assignment sheet, which rooms and bed numbers represent more difficult or easier work.

Bessy Thompson, who works overtime on the 3:00 p.m. to 11:00 p.m. shift, stated that occasionally, St. Louis is "fair" in her assignments, and occasionally she is not. Thompson stated that when nurses see their assignments and don't want them because they are more difficult they tell St. Louis "I don't want to go there." St. Louis then removes that nurse's name with white-out and inserts another nurse's name for that assignment.

St. Louis is a Local 707 delegate who was known to support 1199. Thompson stated that St. Louis grants a nurse's request for a lighter assignment if the nurse making the request is (a) her friend (b) of American, Filipino, Haitian, or Hispanic nationality or (c) a supporter of 1199. In contrast, St. Louis gave the heavier assignment to a nurse she does not like or a nurse who supported Local 707. Thompson quoted St. Louis as saying, "if you are not with me you are not getting favorable treatment." Employee Thompson said that when nurses complained to St. Louis that her assignments were unfair, she told them to complain to director of nursing Chong Magno, or just "do the assignment."

Employee Carol Sheffield testified that St. Louis made unfair assignments to her in 2008 and 2009. Allegedly arbitrary assignments were the subject of formal grievances at least as early as March 23, 2010, when a labor-management meeting was held at which Local 707 raised employees' allegations concerning "arbitrary and capricious scheduling and assigning employees in nursing."

On April 20, 2010, Machado wrote to owner Samuel Paneth, complaining that in the past few months, the Employer violated its contract with Local 707 and has not cooperated with the Union in resolving them, causing a breakdown in labor-management relations. The alleged violations included discriminatory and arbitrary assignment and scheduling of nurses, with certain nurses claiming that others were given more desirable schedules and assignments based on their nationality. Regarding this allegation, Machado testified that "Black employees would have the worst assignments, the heaviest assignments...." She also stated that there were more patients on the sixth floor than on other units and that Filipino employees received "lighter" assignments" on that floor.

Employee Thompson identified certain names listed on "heavy" assignments as being whited out and other names inserted. However, it was noted that certain of the allegedly unfair assignments were made on January 12, 2011, which predated the 1199 petition filed on January 25, the argument being made that the better assignments could not have been made in behalf of those favoring 1199 because that union had not yet made its appearance. However, Thompson also stated that employees began speaking about the need for 1199 before the petition was filed.

A labor-management meeting was held on February 28, 2011. The minutes of that meeting referred to many grievances that were discussed, including "nursing assignments not being equitable and often too burdensome for employees." It was not mentioned in the minutes that preference in assignments was given to 1199 supporters.

Accordingly, the complaint that St. Louis made unfair assignments had been made as early as three years before the start of the critical period. Assuming that St. Louis made assignments which were arbitrary, it is clear that she had many criteria for doing so. Thus, she favored employees of American, Filipino, Haitian and Hispanic descent, her friends, and people she liked. Making assignments on those grounds may be a violation of the contract. But it cannot be said that she made assignments based on an employee's support for 1199 since at the time the complaints were first made, 1199 had not made its appearance at the Employer.

No credible, definite proof has been received that the assignments St. Louis made were to people who were supporters of 1199. Thus, Sheffield testified only that employee Hood received favorable assignments from St. Louis because she (Sheffield) knew that Hood supported 1199. Sheffield stated that she did not know whether St. Louis gave her lighter assignments because she was an 1199 supporter. Indeed, one month before the election when Hood told Sheffield that she supported 1199, St. Louis was not a party to that conversation and Sheffield did not inform St. Louis of Hood's support for that union.

I therefore cannot find, as alleged, that it has been proven that St. Louis made assignments to employees in order to dissuade them from supporting Local 707 or to cause them to support 1199.

St. Louis' Failure to Present Grievances of Employees

Employee Parker stated that during Local 707 delegate meetings, St. Louis routinely reported that the employees on her shift had no problems and presented no grievances brought by those workers. Nevertheless, according to Parker, certain employees on St. Louis' shift told Machado that they had ongoing problems having their health insurance bills paid. They said they spoke to St. Louis about these items but she had not brought it to the attention of Local 707.

Employee Thompson stated that St. Louis occasionally did not attend Local 707 delegate meetings, but when she did, she always said that no employees on her shift presented any problems. Thompson knew that this was not true, and commented at the meeting that some employees on that shift complained to her (Thompson) that their health insurance bills were not being paid, and that they did not know that they had to present their bills to Machado who would raise the issue at a labor-management meeting. Thompson reported that at one delegate meeting, one employee on St. Louis' shift, Ms. Mason, said that the employees "have issues." St. Louis told her to "shut up" but Mason continued to speak.

It appears that despite St. Louis' alleged long-term shortcomings as a delegate, she was not removed as a delegate. Moreover, other delegates were aware of the employees' grievances and could have and did, in fact, present them to Machado. In addition, as set forth above, several meetings with the insurance broker, Local 707, the Employer, and the employees who had health insurance issues took place. Employees attended those meetings, and those allegedly not represented properly by St. Louis could have been specifically invited to attend.

Accordingly, I cannot find, as alleged, that it has been proven that St. Louis intentionally prevented employees' grievances from being addressed at meetings in order to cause employees to believe that Local 707 was not representing them properly, and therefore cause them to support 1199.

St. Louis Reporting an Employee's Alleged Misconduct to the Employer

Employee Okwuchi Onyeneho whose nationality is Nigerian, spoke to a co-worker in their native language when employee Jean shouted at her to "speak English here." Onyeneho tapped Jean's ear to get her attention and said that they were not speaking about her. The Employer learned of this incident, and Onyeneho was directed to receive a psychological evaluation and attend an anger management program. She did not do so and was suspended and then discharged.

Machado testified that she met with St. Louis and Onyeneho to investigate the incident. Onyeneho described what happened and St. Louis told Machado that Onyeneho was not a nice person in that she was "making trouble on the floor," and described a confrontation between them. St. Louis said that she did not witness the "ear-twisting" incident, but shortly after, saw the victim crying in the break room. St. Louis asked her what was wrong and she related the incident to her. St. Louis advised the victim to report the incident to the director of nursing, prodding her to do so, asking if she would wait until Onyeneho killed her before she complained to management.

Machado asked why St. Louis and the victim did not report the incident immediately to the delegates. Machado stated that St. Louis said that she (St. Louis) told the victim to report the incident to the supervisor. Carlette Parker, a delegate who was present at the delegates' meeting where the incident was discussed, testified that she too would have told the victim to report the incident to management, but nevertheless doubted St. Louis' version of the incident since St. Louis told the delegates at the meeting that she did not like Onyeneho.

Based on St. Louis' remarks, Machado had the impression that St. Louis failed to process a legitimate grievance – that Onyeneho was improperly accused of wrongdoing, and instead denigrated the potential grievant.

Based on the above, it does not appear that St. Louis improperly told the victim of the ear-twisting incident to report it to management. Delegate Parker said that she would have given the same advice. Importantly, there was no showing that this incident was related to the election in any way. There was no testimony concerning Onyeneho's support for either union, or that St. Louis reported the incident because Onyeneho was a supporter of Local 707.

In sum, I cannot find that Local 707 has proven that the Employer or 1199 has engaged in objectionable conduct during the critical period which affected the results of the election. Accordingly Objection No. 2 is overruled.

D. Objection No. 3

This Objection alleges essentially that security guard Victoria Oyerinde harassed Machado by demanding that she leave the building on the day of the election while permitting Local 1199 representatives to remain in the area. It is also alleged that Oyerinde told voters to vote for 1199.

Facts and Analysis

Following the pre-election conference, the officials and agents of the two unions left the break room voting area and proceeded into the lobby of the Employer's facility. Machado and another Local 707 agent sat down in the lobby. 1199 official Elliott complained to guard Oyerinde that both unions' agents should leave the building and not be present therein during

the voting hours. According to Elliott, the guard directed that everyone leave the facility. According to Machado, Elliott was "in my face" demanding that she leave, and inviting her outside.

5 Machado testified that the guard was "very passionate" about her leaving the facility, and wondered why the guard did not ask Elliott to leave also. It is undisputed that Machado refused to leave the lobby, claiming that she was entitled to be present because Local 707 was the incumbent union representing the employees. Oyerinde was asked to contact a supervisor to resolve the matter. A supervisor appeared and said that agents from both unions should leave
10 the building. Machado refused.

According to Oyerinde, Elliott announced that he was leaving the building, and that Local 707 agents should also leave because that was the "rule." Oyerinde told Machado that "this is how it is." Machado refused to leave, saying that she did not agree with that "rule." Machado
15 asked her to check with Board agent Frank Flores. Oyerinde and the supervisor asked Flores whether union officials were permitted in the lobby, and Flores said that he was not concerned with people in the lobby, adding that "this is our building. We should do anything we want or what we think is the right thing to do." After reporting his advice to Machado, the supervisor then asked both unions' agents to leave. Machado still refused to leave. Elliott and the 1199
20 agents left the building and Machado spent her time either sitting in the lobby or standing outside the facility.

Machado testified that during the day, she used the bathroom in the lobby, and upon exiting the restroom, saw Oyerinde "surrounded" by employees. She asked them if they voted.
25 One worker responded that she did not know how to vote, whereupon Oyerinde told her to "check the green paper. Vote for 1199." Machado immediately asked Oyerinde whether she earlier "chased" her to leave the building so that she could campaign for 1199.

Oyerinde testified that on the day of the election, a number of employees congregated in
30 the lobby at about 7:00 a.m. They were either on their way out of the facility at the end of their 11:00 p.m. to 7:00 a.m. shift, or on their way in to begin their 7:00 a.m. to 3:00 p.m. shift. Inasmuch as the election was in progress at 7:00 a.m., her job was to direct employees who wanted to vote to go to the break room, and that if they were not there to vote, to leave.

Oyerinde stated that at about 7:15 a.m., she was checking the bags of employees who
35 were leaving the facility at the end of their shift. Machado asked to use the bathroom and Oyerinde gave her the key. Oyerinde was called to the back exit to open that door. When she returned to her post one of the workers whose bag she checked was standing there. Oyerinde asked her if she had voted and she said she had. Oyerinde told her to leave the lobby because
40 many people were present and she wanted to keep the lobby clear. At that point, Machado then complained that Oyerinde was speaking to the workers, and Oyerinde replied that she was speaking to her friend, not to Machado.

Oyerinde denied saying anything to the employees about 1199. In this respect,
45 Machado's credibility is called into question. She testified that she obtained the "keys from the security—from the security booth," whereas Local 707 delegate Jacqueline Allen testified that she (Allen) handed her the rest room key.

First, Oyerinde's actions in asking Machado to leave the building were proper. Elliott
50 decided to leave the building first and asked Machado to leave also. When Elliott left, apparently Oyerinde believed that both unions' officials were supposed to leave. At that point, no direction had been made by Board agent Flores or the supervisor as to whether union officials could

remain in the lobby. Then, after Flores said that the Employer could decide the issue, the supervisor directed both union agents to leave. Again, Oyerinde's request that Machado leave the building was proper, as she was acting on Flores' ruling and the supervisor's request.

5 It is significant that after Machado refused to leave, she was not forced in any way to exit the building, but Oyerinde permitted her to remain in the lobby during the entire election if she wished.

10 It has not been proven that Oyerinde is an agent of the Employer. She was a guard employed by a private security company, and was paid by that company, not by the Employer. Machado conceded that she was not aware that Oyerinde was acting on instructions from the Employer in asking her to leave the building.

15 Regarding Oyerinde's alleged suggestion to certain employees to vote for 1199, such actions are evaluated as third-party conduct, Machado did not state the names or the number of the employees who "surrounded" Oyerinde when she made her comment. In addition, only one employee said that she did not know how to vote. It is not known whether the other employees had already voted and therefore, would not have been affected by the direction to vote for 1199. In addition, if an employer may permissibly express, in a noncoercive manner, a preference for one union over another in a multiunion election, it is therefore also permissible for a non-party guard to do so. *Flamingo Hilton-Laughlin*, above.

25 I cannot find that Oyerinde's conduct so substantially impaired the employees' exercise of free choice as to require that the election be set aside. Accordingly, Objection No. 3 is overruled.

E. Objection No. 5

30 This Objection alleges essentially that Local 1199 representatives campaigned at the Employer's facility within 24 hours of the election. It is also alleged that 1199 drove its bus around the facility, and parked it in front of and around the facility on the day before and on the day of the election during the voting hours. It is also alleged that 1199 representatives disregarded the instruction of the Board agent to move the bus. It is further alleged that 1199 distributed various articles to employees from its bus, and that that its representatives were rallying and drinking alcohol with employees from their bus, which was parked in front of and around the facility during voting hours and on the day before the election.

Facts and Analysis

40 Photographs in evidence taken on the day of the election by witness Gail Chatman show a large, purple recreational vehicle (RV) parked in front of the Employer's facility at its main entrance on Jay Street, and on the side-streets adjacent to the Employer's building. Large, easily visible letters on the front of the vehicle states "1199 SEIU". Its right side bears the slogan "SEIU Stronger Together," and its left side bears the numbers "1199."

45 The RV was moved from place to place during the voting hours, up and down the street and a couple of blocks away from the Employer's facility. Employees Carlette Parker and Carol Sheffield stated that during a voting session they looked out the window of the voting room and saw the front of the vehicle.

50 Rickey Elliott, the vice president of 1199, stated that the RV was parked across the street from the facility, about 150 feet from the voting room during the pre-election conference

prior to the start of the election. Once the polling began, the vehicle was parked two to three blocks away, and then he ordered it moved to the corner of the facility, at Jay and Dickerson Streets, where it was about 300 feet from the voting room. There was no evidence that the RV was on the Employer's property at any time.

5 Machado testified that she complained to Board agent Flores at the pre-election conference about the presence of the 1199 RV outside the Employer's premises. According to her, at the pre-election conference attended by her, Elliott and other union agents, Flores told Elliott "about three times" not to park the RV there, and Elliott's response was that he would not
10 move it. It is significant, however, that, also according to Machado, Flores also told those at the conference that "once this is over you all can go, and this is the area I'm concerned about. Inside here is where we vote. Anything can happen there based on the Employer." Machado then asked if she could remain in the building and he replied that that was "between you and the Employer... as long as you are not in the election area."

15 Machado further testified that Flores told Isabelita Sombillo, an 1199 representative at the conference to remove her purple jacket bearing an "SEIU" insignia, but she continued to wear it. She was not an observer or employee.

20 Elliott testified that Board agent Flores told those assembled at the pre-election conference that Machado had complained about the presence of the RV outside the Employer's facility. According to Elliott, Flores told the group, consistent with Machado's version, that he (Flores) was not responsible for anything outside of the election area, and if they had any problems they could file charges after the election. Elliott denied being told by Flores to move
25 the bus, and denied hearing Flores tell Machado that he directed him to move the bus. Elliott further testified that when Machado complained that Sombillo was wearing an SEIU jacket, Flores asked whether she would be an election observer, and when told that she would not be an observer, Flores just repeated that she would not be an observer and "left it at that." Flores did not testify.

30 Based on the above, I cannot credit Machado's testimony that Flores told Elliott to move the RV and he refused. Thus, Machado and Elliott testified that Flores said that he was only concerned about the voting room area, and that it was the Employer which was responsible to regulate conduct on its property outside the voting room. Clearly, if Flores was only concerned
35 about conduct inside the voting room he would not have asked Elliott to move the bus..

40 Regarding the allegation that 1199 distributed alcohol to employees from the RV and that it was used to rally with employees, employee Chatman provided the only evidence as to this Objection. She stated that she never went in the RV, did not see any drinking outside the bus and was not offered a drink by anyone. Nevertheless, she was told by Employer supervisor Martha Ames that alcohol was consumed by employee supporters of 1199 inside the bus after the end of the election. Similarly, employee Bessy Thompson testified that an unnamed worker told her that she had two beers on the bus on the day of the election. Neither Ames nor the
45 unnamed worker testified.

50 Employee Bessy Thompson testified that she heard employee Lillian Smith chant "1199, 1199" in the Employer's lobby after the polls had closed for the first session, and in between the two polling times. Thompson further testified that she saw employee Billings, an 1199 supporter, standing near the bathroom speaking to five or six employees as they passed by near the voting room on the day of the election. At 2:00 p.m., Billings acted as the 1199 observer in the afternoon voting session. Employee Melton Martin testified that administrator Eisdorfer remarked to her that she did not recall giving Billings the day off to be an observer. Martin stated

that, as a Local 707 delegate she would have been aware if an employee was disciplined for taking time off from work without permission, and she did not become aware that Billings received any discipline. Employee Parker saw Billings speak to two employees at that time but did not know what was said between them.

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1199 official Elliott testified that he requested that the Employer give two employees, Campbell and Billings, the day off so that they could act as observers for 1199.

Employee Thompson also stated that, on election day, she saw men wearing purple 1199 shirts walking outside the building. Employee Parker testified that she saw them speaking to prospective voters and those who had already voted. She did not state that she heard their conversation.

Machado testified that Local 707's contract with the Employer permitted three "delegates' days" per year pursuant to which the delegates had the day off with pay to engage in union business. Machado requested, and was granted, permission to use election day as a delegates' day. Accordingly, its 10 delegates were in the Employer's lobby and outside the facility during voting hours. Employee Martin, a Local 707 delegate, testified that on election day, she was with Machado and a "handful" of Local 707 delegates in the lobby for most of the day during the voting hours, and that she occasionally went outside the building. She noted that she did not speak to employees during that time.

This Objection states that 1199 acted improperly in campaigning "in violation of the no campaign within 24 hours of the election rule." *Peerless Plywood*, 107 NLRB 427, 429 (1954) prohibits election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time for an election. The rule applies to unions as well as employers. There is no evidence that there were any speeches by 1199 to employees within 24 hours of the election.

The only "no-electioneering" area specified by Board agent Flores was the voting room itself. As set forth above, he specifically stated that he was not concerned with any activity that occurred outside of the break room where the election was being held, and inasmuch as the building was the Employer's concern, the Employer could establish where the unions' agents were permitted to be present. Although the RV bore the name and insignia of 1199 it was not on the Employer's property at any time, and it was outside the no-electioneering area established by the Board agent. See *Lily Transportation Corp.*, 352 NLRB 1028, 1029 (2008), where the Board found unobjectionable an RV bearing the union's banner which was parked in the employer's parking lot where it was clearly visible to anyone who entered the premises to vote. The fact that two voters may have seen the RV when they looked out the window of the voting room does not constitute sufficient proof of objectionable conduct.

There was evidence that 1199's agents were outside the premises speaking to voters during the election. However, there was no evidence as to what they said. Further, an 1199 employee supporter, Smith, was heard to have chanted "1199" in the Employer's lobby at a time during the time when the election was not in progress. In addition, it was testified that employee Billings stood near the voting room speaking to passing employees. Neither the content of her conversation or the number of employees she spoke to was not made a part of this record. It must be noted that she did not engage in "prolonged" conversations with employees who were waiting to vote. *Milchem, Inc.*, 170 NLRB 362, 362 (1968). Accordingly, the conversations of the alleged campaigners were outside the "no-electioneering" zone specified by the Board agent.

I accordingly cannot find that objectionable conduct has been proven in the actions of

1199 or third-party employees.

F. Objections No. 6 and 7

5 Facts and Analysis

These Objections allege essentially that 1199 representatives used coercion, threats of physical violence, and abusive language toward Local 707 employee supporters. It is also alleged that an employee reported Local 707 supporters to the Employer and coerced patients to complain about them. It is also alleged that an 1199 representatives took photographs of employees without their consent and circulated slanderous photographs of Machado and her family without their consent.

First there is no evidence that, as alleged, 1199 supporter Montalvo reported Local 707 supporters to management or coerced patients to complain about them.

Employee Carol Sheffield testified that, at a public meeting held for unit employees, she heard employee Gloria Campbell tell the employees that “if they did not vote for 1199 they would hear from [me] or “you would answer to me.” Campbell did not testify.

Machado testified that prior to the election when she entered the facility for union business, employee Lillian Smith, who is over 70 years old, “dances around” her saying “you’ll be out of there soon. 1199, hey, hey 1199 is here to stay. 1199.” Smith also told employees that if Machado was there on a Wednesday it was for the purpose of receiving the dues checks. Smith told Machado that “she ain’t shit” and said, “I’ll kick your ass.” Machado noted that supervisory staff were present when Smith made these comments, and no one stopped her. Machado called administrator Morton Paneth to demand that Smith stop the “abuse.” Paneth replied that he did not know if he was allowed to become involved in such a dispute. Employees Sheffield, Chatman, Carlette Parker and Bessy Thompson corroborated Machado’s testimony regarding the comments made to Machado by Smith, adding that Smith also called Machado a “bitch” and a “crook.”

1199 official Elliott testified that Smith had never been on the 1199 staff or served as a delegate at the Employer’s facility. He denied hearing Smith make any threatening statements about Machado.

First, the Board has recognized that in a hotly contested election, “a certain measure of bad feeling and even hostile behavior is probably inevitable.” *Cal-West Periodicals*, 330 NLRB 599, 600 (2000). As to the allegations set forth above, the Board will not disturb the election results unless the third party employee’s conduct was “so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.” *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984).

The factors set forth above, in determining whether such an atmosphere existed and assessing the seriousness of the alleged threats do not favor a finding that the threats was serious. Thus, the nature of the threat, “you will hear from me, or answer to me” is vague and innocuous with no specific statement of consequences. Similarly, the threat by Smith to kick Machado’s “ass” is identical to the one in which the Board found “comparable to everyday back and forth among employees and would not tend to suppress employee free choice.” *Mastec North America, Inc.*, 356 NLRB No. 110, slip op. at 3-5 (2011). The threat was not accompanied by otherwise menacing conduct, and was “mere bravado” unlikely to intimidate the listener. Significantly, the threat was directed to Machado, and not to any unit employee. In addition,

Smith was over 70 years old and it is likely that no one took the threat seriously, or believed that she was capable of carrying out the threat. There is also no evidence that Smith had engaged in violence toward anyone. There was also no evidence as to when the threats were made. *Lamar Co.*, 340 NLRB 979, 981 (2003); *Mastec North America*, above.

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It is alleged that 1199 agents took photographs of employees without their consent. One of the photographs received in evidence was a picture of an 1199 agent taking a snapshot of employee Gail Chatman who was, at the same time, photographing the 1199 agent. Chatman was standing in a public place when the photograph was taken, and engaged in the same conduct as the 1199 representative.

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Local 707 official Lopez testified that Elliott told him in the presence of employees before the election that he had to sell his house and van and give that money to Local 707 so that Local 707 could pay its expenses. Lopez also claimed that, after the votes were counted, Elliott yelled at him the words "driving Miss Daisy."

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Regarding the allegation that 1199 circulated photographs with slanderous material about Machado, including photographs of her family and friends without her consent, it appears that Machado or her family posted photographs of her on her MySpace page which were then copied and circulated by 1199. The photographs include Machado at a party, a wedding, and with her family and friends, in bathing attire, in a pool. The flyer stated that, "from her MySpace page, it looks like Odette likes to party. Is this what she spends out union dues on?" and "ask Odette 'where did our dues money go?'"

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A comment in another flyer states "Cooking the books? - Recently, 707 was audited by the Department of Labor. They found numerous bookkeeping violations, including failure to maintain adequate receipts to explain where our union funds were spent." Local 707 produced a letter from The Department of Labor dated July 28, 2009, which stated that an "audit of Local 707's 2006 to 2007 records revealed the following recordkeeping violations: The union did not maintain adequate records regarding receipts by officers to the union and/or payments by the officers on behalf of the union to pay its operational expenses during fiscal years 2006 and 2007."

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Machado testified that, inasmuch as Local 707 was first certified in 2008, it had no union dues in 2006 or 2007. However, she conceded that the July 28 letter referred to the fact that receipts for payments made to the Union by its founder-contributors were not properly documented. The reference in the flyer did not constitute a falsification of the Department of Labor letter. In broad terms it repeated what the letter alleged.

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Regarding campaign propaganda, the Board, in *Midland National Life Insurance Co.*, 263 NLRB 127, 131-133 (1982), stated that it would not set aside elections because of a party's misleading campaign propaganda, except in cases of forgery that preclude employees from recognizing campaign propaganda for what it is. The Board thus will not make judgments on alleged misrepresentations by parties, leaving the assessment of alleged misrepresentations to the good judgment of the voters. Accordingly, the flyer and the photograph, assuming that they are misrepresentations of fact, are properly left to the voters to assess. Accordingly, such campaign propaganda does not constitute objectionable conduct by 1199.

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Employee Parker testified that, prior to the election, she was leaving the facility with Machado and entered Local 707 official Lopez' van. The vehicle began to leave the area but then stopped so that Machado could speak with employee Gurdine from the vehicle. An 1199 supporter ran across the street and shouted to Machado that she was a "crook." Shortly

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thereafter, Elliott approached the vehicle and said "you are a bunch of fucking clowns." Parker stated that Gurdine became nervous and entered her car and left the area.

5 Elliott denied making the comment attributed to him by Parker. He stated that he told them to stop acting like clowns because they were screaming and yelling at an 1199 organizer.

10 As to all of the alleged conduct by 1199, as set forth above, the Board applies an objective standard, under which conduct is found to be objectionable if it has 'the tendency to interfere with the employees' freedom of choice.' In considering the above instances of alleged misconduct, it appears that the number of such incidents were limited, they were not severe, they were unlikely to cause fear among employees, few employees were subjected to the misconduct, and the election result was not close.

15 I accordingly cannot find that 1199 or third-party employees have engaged in objectionable conduct.

G. Unalleged Conduct

20 Local 707 adduced evidence of certain alleged conduct which was not alleged as objectionable conduct. Such incidents will be discussed here in the interest of completion.

25 Employee Sheffield testified that during a meeting held by 1199, an employee asked how quickly 1199 could obtain a contract with the Employer if that union won the election. Elliott allegedly replied that it would take about 30 days to reach agreement. Local 707 official Lopez testified that Elliott told him and Machado that that would be possible because the Employer owed \$2 million to the 1199 pension fund. Elliott denied saying that 1199 would get a contract in 30 days, but conceded that the union would be ready to negotiate immediately, and that it should be able to reach agreement quickly because of the power and strength of 1199. He 30 denied saying anything about the Employer's withdrawal liability to the pension fund.

This allegation was contained in Local 707's original Objection No. 4 which was withdrawn prior to the hearing. Accordingly, I make no findings concerning this allegation.

35 Elliott was quoted at an employee meeting as having encouraged employee Parker, who was a Local 707 delegate, to become a delegate for 1199. She had not been an 1199 delegate when that union represented the employees. She believed that Elliott made that comment to cause dissension among employees and to question to which union she was allied.

40 Employee Chatman quoted David Serrano, who works in the Employer's gift shop and also functions as a handyman, as saying that some employees wanted 1199 to represent the workers because he and other housekeeping employees have pensions from 1199 and were told by 1199 agents that they would lose their pension if they did not vote for 1199.

45 Machado claimed that Elliott told unit members that his union was 1199 New York, not 1199 New Jersey and that this generated some confusion.

None of the above unalleged allegations constitute objectionable conduct.

Conclusions and Recommendation

As to each of the Objections set forth above, I have found that none of the incidents

testified about concerning the conduct of 1199, had a tendency to interfere with the employees' freedom of choice. Accordingly, the number of incidents of alleged misconduct were few, their severity was minimal, they were not likely to cause fear among the unit employees, the number of employees who were subjected to the alleged misconduct was few, no objectionable conduct occurred on the day of the election, and the election results, 130 to 78, were not close. *Cedars-Sinai*, above.

Further, as to the alleged threats of third-party employees Gloria Campbell and Lillian Smith, I cannot find that such threats were so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible. As set forth above, the alleged threat made by Campbell was vague and not definite, the alleged threat of Smith was made to Machado and not to any employee and it is unlikely that anyone believed that she would be capable of carrying them out. *Westwood Horizons Hotel*, above.

As to the conduct of third-party guard Victoria Oyerinde, I cannot find that her demand that Machado leave the building, or her alleged electioneering so substantially impaired the employees' exercise of free choice as to require that the election be set aside. *Hollingsworth*, above.

Inasmuch as I have found that all of the Intervenor's Objections have no merit, I hereby recommend that all of the Intervenor's Objections to the election be overruled.

I further recommend that inasmuch as a majority of the valid votes counted have been cast for 1199, SEIU, United Healthcare Workers East, New Jersey Region, the Board issue a certification of representative on behalf of that union in the collective-bargaining unit set forth in the Report on Objections and Notice of Hearing.⁴

Dated: Washington, D.C., August 2, 2011.

Steven Davis
Administrative Law Judge

⁴ Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, Exceptions to this Report may be filed with the board in Washington, D.C. within 14 days from the date of issuance of this Report and recommendations. Exceptions must be received by the Board by August 15, 2011.